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STATUTE RELIED ON

In the Supreme Court of the United States

OCTOBER TERM, 1937

In the Matter of the Application of James J. Lowrey, Committee of the Person and Property of William Garmes, Incompetent, for an order authorizing him to pay a fee to counsel for legal services rendered the estate

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No. 945

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS' ADMINISTRATION, PETITIONER

v.

JAMES J. LOWREY, COMMITTEE OF THE PERSON AND ESTATE OF WILLIAM GARMES, AN INCOMPETENT PERSON, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

To the Honorable the CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petitioner, Frank T. Hines, Administrator of Veterans' Affairs, prays that a Writ of Certio-

rari issued to review the judgment of the Supreme Court of New York, Appellate Division, Second Department, in the above entitled cause, which judgment became final January 11, 1938, upon denial of a motion for leave to appeal by the Court of Appeals of New York, on the specific question whether the applicable Federal Statute (Section 500, World War Veterans' Act, Section 551, Title 38, U. S. C.) was construed by this Honorable Court in the case of *Hines* v. *Stein*, 298 U. S. 94, 80 L. E. 1063, or is controlled thereby, and if not, whether the said judgment be not in contravention of said Federal Statute.

In support whereof Petitioner respectfully represents to this Honorable Court that he is, and at all times pertinent to this action has been, Administrator of Veterans' Affairs; and that pursuant to the responsibility reposed in him by Section 450, Title 38, U. S. C., and as a party in interest under Section 1384-t of the Civil Practice Act of the State of New York, he appeared in the State Courts by his duly authorized attorney, and now files this petition, on behalf of the said William Garmes, an insane veteran of the World War, and for the purpose of securing for said veteran a right granted, it is believed, by the said Federal Statute; viz., the right not to have his estate charged with a fee made illegal by said Statute.

ACTION IN THE STATE COURTS

This proceeding was commenced by the filing in the Supreme Court of New York held in and for Kings County of an application for an order authorizing James J. Lowrey, as committee of William Garmes, an incompetent person, to pay to James J. Richman, Esq., a fee for legal services rendered to the estate in the matter of the collection of war-risk insurance (6–8 R.).

Affidavits in opposition thereto were submitted by Abraham Schwartz, attorney for the Administrator, and the matter was referred, by an order of Mr. Justice Kadien, dated December 18, 1936, to an Official Referee to take testimony and report with his opinion as to the services rendered by James J. Richman, Esq., and the value of such services (4–5 R.).

A hearing before the Honorable James C. Van Siclen, Official Referee, was held on January 4, 1937, and on January 6, 1937, said Official Referee reported that the services rendered by James J. Richman, Esq., in connection with the war risk insurance contract in the sum of $10,000 issued by the U. S. Government to William Garmes, incompetent, are of the reasonable value of $1,500 (70–71 R.).

On January 12, 1937, James J. Lowrey, Esq., moved the court for an order modifying the report of the Official Referee dated January 6, 1937, so as to increase the fee allowed from $1,500 to $3,000.

An affidavit in opposition to said motion was submitted by Abraham Schwartz for the Veterans' Administration (71 R.).

On February 8, 1937, an order was granted by the Honorable Mr. Justice Thomas C. Kadien and entered in the office of the Clerk of the County of Kings on February 9, 1937, confirming the report of the Official Referee dated January 6, 1937, and directing James J. Lowrey, Committee of William Garmes, incompetent, to pay to James J. Richman, Esq., out of the estate of the incompetent, the sum of $1,500 as and for his legal services (2-4 R.).

An appeal from said order was duly taken by Petitioner herein to the Appellate Division, Second Department, which court on October 23, 1937, affirmed the order of the lower court by entry as follows:

> The above-named Veterans' Administration, Appellant in this proceeding, having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Kings, on the 9th day of February 1937, granting Petitioner's motion to confirm report of Official Referee, awarding to James J. Richman, an attorney, the sum of $1,500 for legal services rendered the estate of the incompetent herein, and the said appeal having been argued by Mr. William A. Gillcrist of counsel for the appellant and argued by Mr. Benjamin C. Ribman of

counsel for the respondent, and due deliberation having been had thereon:

It is ordered that the order so appealed from be and the same hereby is unanimously affirmed with costs (R. 81).

Motion for leave to appeal to the Court of Appeals was duly filed, and was denied by said Appellate Division on November 19, 1937. (R. 80.)

Application to appeal, duly filed with the Court of Appeals, State of New York, was by that court denied January 11, 1938 (R. 80). The effect of said denial is that the order of the Supreme Court, Appellate Division, the highest court in said State having jurisdiction of said cause, became final on January 11, 1938.

This petition for Writ of Certiorari is filed within three months of the time when said judgment became final and there is presented herewith a certified copy of the entire record and proceedings in the State Courts.

This petition for Writ of Certiorari is filed under the provisions of Title 38, U. S. C., Section 344, paragraph (b) (Section 237 Judicial Code as amended), on the ground that the judgment of the State Court deprives the insane veteran, represented by Petitioner, of a right granted by a Federal Statute under a construction of said statute by the said State Courts not heretofore examined by this Honorable Court, and contrary to that formerly reached by the courts of last resort of several States, including that of the State of New

York (In re Shinberg, 263 N. Y. S. 354) and recently by the Supreme Court of the State of California (In re Copsey, 60 Pac. (2d) 121). This latter decision has been modified by decision of the Supreme Court of California in the same case February 24, 1938 (76 Pac. (2d) 691. See petition for Writ of Certiorari in No. 946 filed herewith).

SUMMARY AND BRIEF STATEMENT OF MATTERS INVOLVED—QUESTION PRESENTED

The question presented herein is whether the applicable statute, Section 500, World War Veterans' Act, supra, was construed by this Honorable Court in the case of *Hines* v. *Stein*, 298 U. S. 94, 80 L. E. 1063, or is controlled thereby; and if not, whether the judgment of the New York Court be not in contravention of the terms of said statute.

In this case, wherein no suit was ever filed in a Federal Court under Section 19, World War Veterans' Act, Section 445, Title 38, U. S. C., or otherwise (R. 65), the committee Lowrey purportedly contracted with the attorney, James J. Richman, to represent the insane veteran, William Garmes, in securing payment of war risk insurance; and in the event of success—"the court will fix your fee" (R. 70.) The attorney, through petition filed by the committee, claimed a fee of $3,000 (R. 69) and the court allowed a fee of $1,500 (R. 71). Your Petitioner objected on the ground, among others, that any fee in excess of $10.00 is prohibited by Section 500, supra (31–32 R.); and counsel for

committee contended that the decision of this Honorable Court in the Stein case, supra, was that the Congress cannot limit the discretion of a State Court to allow an attorney fee in the case of an insane veteran under guardianship (R. 43). The decision of the court—no opinion rendered (R. 81)—therefore no citation available—overruling your Petitioner's exceptions and allowing the fee must have been based upon said theory as the New York courts had theretofore held that the statute is controlling as to the State Court (*In re Shinberg*, supra).

FACTS FROM WHICH CONTROVERSY ARISES

About April 1934, James J. Lowrey, committee of the person and property of William Garmes, an incompetent person, under an appointment made on or about March 23, 1921, retained James J. Richman, an attorney, to file a claim of the said William Garmes against the Veterans' Administration upon a policy of war risk insurance (R. 6); and an agreement, undated, was entered into by the committee and the same James J. Richman providing that in the event that the proceeding for the payment of the war-risk insurance was successful, a fee to Mr. Richman would be fixed by the court; and in the event that the proceeding was unsuccessful, there would be no charge (R. 70).

Thereafter, James J. Richman assisted the said committee in preparing necessary papers, affidavits, and other data for submission to the Insur-

ance Claims Council of the Veterans' Administration (Exhibits A to I incl. 12–27 R.) claiming permanent and total disability from 1920.

This claim was denied by the Veterans' Administration, April 19, 1934, on the sole ground that Public, No. 2, 73d Congress, the so-called "Economy Act," had repealed all laws pertaining to War Risk Insurance (R–12). A few days later, June 4, 1934, this Honorable Court, in the Lynch and Wilner cases, 292 U. S. 571, 78 L. E. 1434, held that so much of said act as purported to repeal said laws was void. Thereafter, said claim was considered and allowed by the Veterans' Administration.

James J. Richman on or about July 7, 1934, executed a power of attorney to the Disabled American Veterans of the World War to prosecute a claim for disability insurance benefits before the Insurance Claims Council on behalf of William Garmes, the incompetent person (41–42–66 R).

James J. Richman appeared personally before the Insurance Claims Council upon the hearing before that body on October 19, 1934, in Washington, D. C. (R. 28), and on October 31, 1934, the Insurance Claims Council of the Veterans' Administration approved the claim for insurance (R. 21–23).

On or about February 25, 1936, the committee, through his attorney, James J. Richman, brought an application at Special Term, Part VI (Supreme Court, Kings County) for permission to file an intermediate accounting which was denied (R. 67–68). Thereupon an application was made in Spe-

cial Term, Part VI for an order fixing an allowance *to the committee* for extraordinary services by the said committee on account of the insurance recovery (R. 38, 68). The purpose of this application was in order that the committee might obtain an allowance from which he could pay an attorney's fee to James J. Richman for his services in the war-risk-insurance proceeding (R. 69). This application was withdrawn by a letter from James J. Richman to the Honorable George E. Brower, Presiding Justice, said court, which letter is dated June 11, 1936, because the attorney believed that in view of the decision of this court in *Hines* v. *Stein, supra,* he could claim a fee in his own right (R. 38, 69).

Thereafter, and on August 17, 1936, the committee petitioned the Court at Special Term, Part VI, for permission to pay James J. Richman, his attorney, a reasonable fee for his services in obtaining the war-risk insurance from the Veterans' Administration (R. 5-8). James J. Richman joined in the petition of the committee and asked for a fee of $3,000 (R. 8-11).

Thereafter, on an order made and entered on December 18, 1936 (R. 4-5) a hearing was had before the Official Referee (R. 54-69) who reported that the services performed were of the reasonable value of $1,500 (R. 70). The Administrator of Veterans' Affairs as required by Federal Statute, Section 21, World War Veterans' Act (Sec. 450, Title 38, U. S. C.) as amended by Public, No. 262, 74th Congress, and as authorized by Section 1384-t

of the Civil Practice Act, New York, duly objected to the report and the fee as contrary to the applicable Federal Law. The report was, nevertheless, confirmed by an order made and entered on February 8, 1937 (R. 47). Appeal was taken with results as stated supra under heading, "action in State Courts." (Pp. 3–6 herein.)

The sole question involved is the legality of the fee, the attorney having previously been paid his expenses (R. 29), although the reasonableness of the fee dehors the statute was not conceded. The insurance in question was paid pursuant to, and by virtue of, the provisions of Section 300 Title III of the War Risk Insurance Act, October 5, 1917, as amended by the World War Veterans' Act, 1924 (Sec. 511, Title 38, U. S. C.) as amended.

Section 500, Title V of said Act (Sec. 551 Title 38, U. S. C.) is as follows:

> Except in the event of legal proceedings under section 19 of Title I of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application

to the bureau shall not exceed $10 in any one case: *Provided, however,* That wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered, and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment.

STATUTES AND AUTHORITIES RELIED UPON BY PETITIONER

The statute quoted, supra (Section 500, World War Veterans'-Act) is controlling upon attorneys and guardians of insane veterans; and therefore upon State Courts having jurisdiction of such guardianships. *In re Shinberg,* 263 N. Y. S. 304. *In re Minor,* 145 So. 507. *Hines* v. *McCoy,* 159 So. 306.

The *Stein* case, supra, is not controlling. *In re Copsey*, 60 Pac. (2d) 121. (But see later decision in same case, 76 Pac. (2d) 691, indicating judicial uncertainty on the question.

Any contract contrary to the provisions of said Section 500 is illegal, and hence void. *Conlon* v. *Adamski*, 77 Fed. (2d) 397. The contention of respondent that the Congress may not limit an attorney fee in a matter pending in a State Court is contrary to the decision of this Honorable Court in *Capital Trust Co.* v. *Calhoun*, 250 U. S. 208.

The Congress may, indirectly, restrict effective action by State Courts through legislation on a *subject* within its constitutional power; and may prohibit, or render unenforceable, contracts contrary to legislation within such constitutional power. *Gold Clause cases*, 294 U. S. 239; *Gibbons* v. *Ogden*, 9 Wheat. 1, 22 Law Ed. 207. In enacting said statute (Section 500, World War Veterans' Act) the Congress acted within such power. *Margolin* v. *U. S.*, 269 U. S. 93.

The intent of the said statute—i. e., to be all inclusive and to operate on all alike—seems clear from the language used by the Congress; but, if not, recourse may be had to debates and reports which show that the Congress intended to and did fix a limit beyond which a fee may not be charged, or approved—i. e., a court has no jurisdiction to allow a fee contrary to the Federal Statute. (Congressional Record, Volume 56, Part 6, pp. 5220-26, April 17, 1918.) These debates show a definite view of Congress that the matter of a fee should

not be left to the discretion of courts—a view with the wisdom of which we are not concerned, as the Congress has a right to its own conclusions thereon.

While this Honorable Court has intimated, in *Hines* v. *Stein*, a view that there may be no necessity for limiting fees to be allowed by courts, the Congress may determine questions of fact and policy, as a basis for legislation, and such decision is final. *Gold Clause* cases, supra. *Ball* v. *Halsell*, 161 U. S. 72.

The Administrator of Veterans' Affairs intervened on behalf of the insane veteran pursuant to Section 450, Title 38, U. S. C., 49 Stat. 607, and Section 1384–t, Civil Practice Act, New York; and the overruling of his objections by the New York Court deprives the insane veteran of a right, privilege, or immunity granted by the Federal Statute.

This Court has jurisdiction as provided in Title 28, U. S. C., Section 344, Paragraph (b) to review, by certiorari, the action of the court below which, it is believed, erroneously construed the Federal Statute, and the decisions of this Court, and thereby deprived the insane veteran, represented by your Petitioner, of a right, privilege, or immunity granted by Federal Statute and which was appropriately claimed on his behalf.

The decision of the Supreme Court, Appellate Division, Second Department—in view of denial of appeal by the Court of Appeals—is a final decision of the highest court of the State having jurisdiction, and the writ of certiorari should be directed

to the said Supreme Court, Appellate Division, Second Department, State of New York. *Pa. Ry. Co. v. Commission*, 250 U. S. 566.

ASSIGNMENTS OF ERROR

The Supreme Court, Appellate Division, Second Department, New York, erred in affirming order of lower court "confirming the report of an official referee awarding to James J. Richman, an attorney, the sum of $1,500 for legal services rendered to an incompetent's estate in securing payment of war-risk insurance", contrary to the provisions of Section 500, World War Veterans' Act.

REASONS FOR ALLOWANCE OF THE WRIT

In view whereof Petitioner respectfully represents that the Writ of Certiorari should issue because:

1. In allowing said fee the court erroneously decided a Federal question adversely to Petitioner's contentions, and, it is believed, contrary to the purpose and intent of the Congress and the decisions of this Court.

2. The matter is one of importance not only to the insane veteran in this case but to thousands of other insane veterans of the World War, and final determination of the question will potentially affect decisions in every Probate Court of the Nation.

3. The decision and order of the New York Court operates a denial to the insane veteran, represented by Petitioner, of a right, privilege, or immunity granted by Federal Law, viz, the right not to have his estate depleted by an attorney fee in excess of

and contrary to the provisions of Section 500, World War Veterans' Act.

4. The allowance of a fee contrary to the provisions of the Federal Statute deprives the insane veteran of a right for which he contracted.

Attached hereto is the Brief of Petitioner in support of his petition for said Writ of Certiorari to which reference is respectfully made for discussion of the authorities in support of this petition and of the right claimed on behalf of the insane veteran.

Wherefor, your Petitioner respectfully requests that this Court issue a Writ of Certiorari to the Supreme Court, Appellate Division, Second Department of the State of New York, New York City, New York, to certify and send to this Court a full and complete transcript of the record herein, to the end that the cause may be reviewed and determined by this Court as provided by law, and that the order or judgment of the said New York Court may be reversed with costs, and for such other and further relief as may be appropriate and granted in the premises.

JAMES T. BRADY,
Solicitor, Veterans' Administration.
EDWARD E. ODOM,
Asst. Solicitor, Veterans' Administration.
JAMES A. CLARK,
Chief Attorney, Veterans' Administration,
New York City, New York.
Y. D. MATHES,
Asst. Solicitor, Veterans' Administration.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

In the Matter of the Application of James J. Lowrey, Committee of the Person and Property of William Garmes, incompetent, for an order authorizing him to pay a fee to counsel for legal services rendered the estate

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No. 945

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS' ADMINISTRATION, PETITIONER

v.

JAMES J. LOWREY, COMMITTEE OF THE PERSON AND ESTATE OF WILLIAM GARMES, AN INCOMPETENT PERSON, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW AND DATE OF JUDGMENT.

No opinion was rendered by the Supreme Court, Kings County, State of New York, by the Appellate Division, Second Department, State of New

York, nor by the Court of Appeals, State of New York; hence there is no citation.

The order of the Supreme Court, Kings County (R. 2–4) was affirmed by the Appellate Division, Second Department, October 23, 1937 (R. 81), and motion for leave to appeal was denied November 19, 1937 (R. 80). The Court of Appeals denied application to appeal January 11, 1938 (R. 80), the judgment, or order, of the Supreme Court becoming final on said date.

This Court has jurisdiction.

First. The sole question was one arising under the Federal Statutes, Section 500, World War Veterans' Act, viz, whether, despite the specific terms of said Statute, the attorney could charge and the court allow a fee in excess of $10.00. The attorney contended (R. 43) that this Court in the case of *Hines* v. *Stein*, 298 U. S. 94, "held unequivocably that Congress nowhere intended to interfere with the exclusive power of State Courts over the affairs of incompetents and that Section 500 did not place any such limitation on fees as contended by the Veterans' Administration." Petitioner contended that Section 500 was properly construed by the New York Courts in the case of *In re Shinberg*, 263 N. Y. S. 354, that said decision was controlling in this case (R. 32–33); that the decision in the *Stein* case, supra, construed certain pension statutes and Executive Orders (R. 47); and that the legislative history of Section 500 clearly showed an intention that "under no circumstances was an attorney to

receive any fee in connection with a claim for insurance other than as provided therein" (R. 47–48–51). The reasonableness of the fee dehors the statute was contested (R. 30–31, 69) but that question is one on which the decision of the State Courts would be final and not reviewable by this Court. The sole question, therefore, is the legality of the fee under the Statute—a Federal question.

Second. The power and authority of the United States Supreme Court to review the final judgment of the Supreme Court, Appellate Division, Second Department, State of New York is clear.

Pennsylvania Railroad Company v. *Public Service Commission of Pennsylvania,* 250 U. S. 566

In that case this Court reviewed a judgment of the Superior Court of Pennsylvania wherein the Supreme Court of Pennsylvania had denied an appeal.

Third. The right of the insane veteran, and the responsibility and duty of Petitioner to protect said right, arise from, and are imposed by, the Statutes of the United States; and there is involved a controversy respecting the construction and effect of a Federal Statute and the application thereto of decision of this Court.

Hines v. *Stein,* 298 U. S. 94

In that case this Court reviewed the judgment of the Superior Court, Allegheny County, Pennsylvania, appeal having been denied by the Supreme

Court, Pennsylvania, on the question of the legality of an attorney fee allowed by said court for services rendered in a claim under Federal pension statutes and Executive Orders. As in this case, the committee of an insane veteran was asking a fee for an attorney, and Petitioner opposed the fee on behalf of the insane veteran but under an Executive Order attempting to make the pension statutes applicable. The judgment of the Supreme Court, Appellate Division, New York, is contrary to decisions of this Court, it is believed, and the subject matter is such that this Court may and should consider, and determine the case on the merits, involving as it does the proper construction of the Federal Statute (Section 500 supra) limiting attorney fees and similar to that construed in

Capital Trust Company v. *Calhoun*, 250 U. S. 208

In that case, a proceeding in equity in a probate court (circuit court) of Kentucky to secure an accounting by the administrator, the attorney intervened by cross petition praying for judgment for an attorney fee based upon contract, as in this case, for services rendered in procuring payment of a claim against the United States; which fee was in excess of the limitation placed thereon by the Congress. The State Courts had allowed the fee as claimed; but this Court held that the limitation was binding on the attorney. It follows that it was controlling also as to the judgment in the State Courts.

In that case, likewise a suit against an estate in administration and involving a claim, based upon contract, for an attorney fee in excess of that prescribed by Congress in the Indian Claims Act of March 3, 1891 (p. 851, 26 Stat.), this court pointed out that in decisions prior thereto it had held valid contracts for contingent fees, by which attorneys had contracted (as in the instant case) to be allowed a fee in the event of success, and nothing in the event of failure to have the claim allowed; but that the Congress evidently had learned that to permit such contracts, with no fee limitation, may lead to extortion and oppression. It held that the Congress had the right to limit the fees, and that a suit for any amount in excess thereof could not be maintained by the attorney upon either a contractual or a quantum meruit basis. Again it follows that the judgment of the State Court was controlled by the Federal fee statute.

Fourth. The decisions of the State Courts wherein is involved the application of Section 500, supra, are in conflict with the decision in this case, and the point should be decided by this Court.

In re Copsey, 60 Pac. (2d) 121

In that case, which was on all fours with the instant case, an attorney acting for the guardian (sister) of an insane World War veteran prepared and filed with the Veterans' Administration a claim for

war-risk insurance, which claim was allowed and paid. Upon a petition filed by the guardian in the probate court (Superior Court, Mendocino County, California) an order was entered allowing her to pay the attorney a fee of $4,000. An appeal was taken by the Administrator to the Supreme Court of California on the ground that such fee is contrary to and prohibited by Section 500, supra. The attorney filed a motion to dismiss the appeal on the ground, among others, that the matter is governed by the decision of this Court in *Hines* v. *Stein*, supra, but the Supreme Court of California in refusing to dismiss the appeal, held that the *Stein* case is not determinative of the question in issue. In a later decision on the merits of the same case the California Supreme Court in effect reversed itself—see companion case filed herewith. This Court has jurisdiction to settle this point. *In re Copsey*, 76 Pac. (2d) 691.

Fifth. The Writ of Certiorari should be directed to the Supreme Court, Appellate Division, Second Department, State of New York, that being the highest court having jurisdiction of this cause since application to appeal was denied by the Court of Appeals, State of New York.

Pennsylvania Railroad Company v. *Public Service Commission of Pennsylvania*, 250 U. S. 566

That case involved a review of a judgment of the Superior Court of Pennsylvania wherein the Supreme Court of the State had denied an appeal.

STATEMENT

In the interest of brevity reference is made to the statement of material and essential facts set out in the Petition (pp. 6 to 10 hereof).

ASSIGNMENT OF ERROR

The Supreme Court, Appellate Division, Second Department, State of New York, erred in that—

1. It affirmed the order of the Supreme Court, "affirming the report of an official referee awarding to James J. Richman, an attorney, the sum of $1,500 for legal services rendered to an incompetent's estate in securing payment of war-risk insurance," in that

Said order is contrary to the specific provisions of Section 500, World War Veterans' Act (Sec. 551, Title 38, U. S. C.). Note: The question of the reasonableness of the fee *dehors the statute* is not subject to review by this Court. It will therefore be discussed only incidentally as it may illustrate the recognized need upon which the applicable legislation was based, its purpose, and the propriety and validity thereof.

SUMMARY OF ARGUMENT

1. In enacting Section 500, the Congress of the United States limited all fees for services mentioned therein; and that such limitation should be controlling as to all fees, whether in a State or Federal Court and on all *persons*.

2. While the Congress may not *directly* qualify the jurisdiction or procedure of a State Court, it

may and frequently does so indirectly, that is, by legislation upon a particular subject.

3. When the Congress has validly legislated on a *subject*, the law, as the supreme law of the Land, is binding upon all, and the judgments of courts are controlled thereby.

4. The necessity for the policy, and the factual basis for the legislation, is for the Congress to determine; and its determination if directed to a constitutional end is not reviewable.

5. The Legislative History shows the intent of Congress to limit fees otherwise allowable by courts.

6. Section 500 is therefore controlling as to fees allowable by State Courts for services stated therein.

7. State Courts of appellate jurisdiction have held uniformly that they have no jurisdiction to allow a fee contrary to Section 500.

8. The decision of this Court in *Hines* v. *Stein* did not construe said Section 500 and does not control, but the case is controlled by the Supreme Court decision in *Ball* v. *Halsell*, and *Capital Trust Company* v. *Calhoun, supra.*

9. The probate court has no power to waive the fee limitation.

10. Finally, the veteran contracted for the protection of the Statute, and the court must give effect to the fee limitation as a part of the veteran's contract.

The Statutes and authorities relied upon are set out in the Petition (pp. 11 to 14 herein).

ARGUMENT

Upon the above assignment of error the following argument is respectfully submitted.

1. In enacting Section 500, the Congress of the United States limited all fees for services mentioned therein; and that such limitation should be controlling as to all fees, whether in a State or Federal Court and on all *persons*.

The language of the Act, in pertinent part, is—

> Except in the event of legal proceedings under Section 19 * * * no * * * attorney * * * shall be recognized in the presentation and adjudication of claims * * * and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case, * * *. *Any person who shall directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive* any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, * * *.

Can this language, enacted for the protection of all veterans and claimants for benefits, and by its clear terms made applicable to all persons in all claims under the Act be so construed as to deprive an insane veteran of such protection and to make

legal, because approved by a probate court, an act declared a misdemeanor by the law? This question, it is believed, has not been passed on by this Court; although the above-quoted language was construed in

Margolin v. *United States*, 269 U. S. 93

In that case the attorney Margolin had been convicted in the Federal District Court for a violation of the penal provisions of said Act. This was affirmed by the Circuit Court of Appeals (2nd Circuit) the court saying (3 Fed. (2d) p. 602):

> One Yetta Cohen retained the defendant to press, and secure the allowance of, her claim as beneficiary under a policy taken out by Joseph Freeman, her nephew, who died while enlisted in the United States Army. He had some correspondence with the Veterans' Bureau and made one trip to Washington to examine the records and interview the officials. It may be assumed that his services were of substantial service in procuring an allowance of Yetta Cohen's claim, and under any appraisal were worth many times the sum of $3. For them he demanded $2,000 and received $1,500.
>
> In his negotiations with the Bureau he must have been recognized as an attorney in the presentation of her claim, or his services could effect nothing. If he was so recognized, it was in the face of the statute, and he can recover nothing for services which he is forbidden to render. The act established

> a system designed to be self-executing. It makes no difference how well or ill it works. With obvious jealously of the mediation of agents or attorneys, who might fleece the beneficiaries, it excluded them from any share in its operation, except to draw up the simple papers. The system must get along without their help, and if the beneficiaries suffer more than they would if they could employ attorneys with the risk of extortion, *courts may not correct the blunder.* [Italics supplied.]

This Court, affirming the decision of the Circuit Court of Appeals, supra, after reviewing the legislative history of the statute, said:

> We find no reason which would justify disregard of the plain language of the section under consideration. It declares that any person who receives a fee or compensation in respect of a claim under the Act except as therein provided shall be deemed guilty of a misdemeanor. The only compensation which it permits a claim agent or attorney to receive where no legal proceeding has been commenced is three dollars for assistance in preparation and execution of necessary papers. And the history of the enactment indicates plainly enough that Congress did not fail to choose apt language to express its purpose.
>
> The validity of Section 13 construed as above indicated, we think, is not open to serious doubt.

It would seem that our inquiry should end here, the decision last above cited, construing as it did the statute applicable to the facts in the instant case, seeming to say that *under no circumstances* may a fee contrary thereto be received. But the State court held, in effect, that the purport of the decision of this Court in the case of *Hines* v. *Stein*, 298 U. S. 94, is that if Margolin had procured his $1,500 fee to be approved by a probate court in a guardianship proceeding it would not have been a violation of the statute.

Did this Court hold that despite Section 500 a State probate court has jurisdiction to allow a fee contrary to the provisions of said statute?

This Court said in that case (298 U. S. at p. 97):

> Petitioner submits that Congress, proceeding within its delegated power, directly, or through authorized executive action, has prescribed permissible fees for services such as those rendered by Sherrard, and directed how they may be paid. Also has inhibited payment of other or different sum in any manner.
>
> We need not consider the extent of Congressional power in this regard, since we are of opinion that, properly construed, the provisions relied upon do not apply where payments like the one here involved are directed by a state court having jurisdiction over the guardian of an incompetent veteran.
>
> The petition for certiorari asserts that the objections to respondent's application to the Court of Common Pleas were based upon

the President's Order of March 31, 1933 (Veterans' Regulation No. 10), permitted by Sections 4 and 7 of the Act of March 20, 1933, c. 3, 48 Stat. 9; "Instructions" promulgated by the Administrator under authority of that Order; and Sections 111, 114, and 115, Title 38, U. S. C. A."

Nothing brought to our attention would justify the view that Congress intended to deprive state courts of their usual authority over fiduciaries, or to sanction *the promulgation of rules to that end by executive officers or bureaus.*

The broad purpose of regulations in respect of fees of those concerned with Pension matters is to protect the United States and beneficiaries against extortion, imposition or fraud. *Calhoun* v. *Massie,* 253 U. S. 170, 173. Dangers of this character are not to be expected in connection with the orderly exercise of authority by state courts over appointees properly entrusted with Pension funds. The purpose in view is for consideration when the true meaning of statute or rule is sought." [Italics ours.]

If by this decision it were meant that the Congress can in no way limit or affect the action or judgment of a probate (state) court, it would be clear that the answer to the above question would be in the affirmative. That such was not the meaning intended is believed apparent, not only from the language used by the court, but by reason of a long line of decisions holding that the Congress in enacting legislation, within its constitutional power,

on a specific subject, affects or controls the exercise of jurisdiction by State Courts on the subject of such Federal law. *Mondou* v. *Ry. Co.*, 223 U. S. 1, and cases cited. Further, this Court said in *Norman* v. *Ry. Co.*, 294 U. S. 240, at p. 309:

> The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.

2. While the Congress may not *directly* qualify the jurisdiction or procedure of a State Court, it may and frequently does indirectly, that is, by legislation upon a particular subject, do so.

McCulloch v. *Maryland*, 4 Wheat. 316

This Court, speaking through Chief Justice Marshall, said at page 405:

> If any one proposition could command the universal assent of mankind, we might expect it would be this, that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is the Government of all; its powers are delegated by all; it represents all, and acts for all. * * *

and at page 426:

> This great principle is that the Constitution and the laws made in pursuance thereof are supreme, that they control the Constitution and laws of the respective states, and cannot be controlled by them.

Mondou v. *New York, New Haven, and Hartford Railway Company*, 223 U. S. 1

That was a case involving rights arising under the Federal Workmens' Compensation Act, and the State Courts had declined to take cognizance of certain provisions thereof. This Court said (p. 55):

> We come next to consider whether rights arising under the congressional act may be enforced, as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion * * *.

And at page 56:

> Because of some general observations in the opinion of the supreme court of errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts, or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by

local laws, is appropriate to the occasion and is invoked in conformity with those laws, *to take cognisance of an action to enforce a right of civil recovery arising under the act of Congress, and susceptible of adjudication according to the prevailing rules of procedure.* * * *

The suggestion that the act of Congress is not in harmony with the policy of the state, and therefore that the courts of the state are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution adopted that act, *it spoke for all the people and all the States, and thereby established a policy for all.* That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state. As was said by this Court in *Claflin* v. *Houseman,* 93 U. S. 130, 136, 137; 23 L. E. 833, 838, 839 (p. 57):

"The laws of the United States are laws in the several states, *and just as much binding on the citizens and courts thereof as the state laws are.* The United States is not a foreign sovereignty as regards the several states, but is a concurrent, and, within its jurisdiction, paramount sovereignty. * * *

If an act of Congress gives a penalty (meaning civil and remedial) to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not

be enforced, if not provided otherwise by some act of Congress, by a proper action in a state court. The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief; because *it is subject also to the laws of the United States, and is just as much bound to recognize those as operative within the state as it is to recognize the state laws.* The two together form one system of jurisprudence, which constitutes the laws of the land for the state; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. * * * It is true, the sovereignties are distinct, and neither can interfere with the proper jurisdiction of the other, as was so clearly shown by the Chief Justice Taney, in the case of *Ableman* v. *Booth* (21 How. 506, 16 L. Ed. 169); and hence the state courts have no power to revise the action of the Federal courts, nor the Federal the State, except where the Federal Constitution or laws are involved. But this is no reason why the state courts should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied."

(At p. 58:)

"We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the states when their

> jurisdiction, as prescribed by local laws, is adequate to the occasion." [Italics supplied.]

3. When the Congress has validly legislated on a *subject*, the law, as the supreme law of the Land, is binding upon all and the judgments of courts are controlled thereby.

Ball v. *Halsell*, 161 U. S. 72

That was an action on a written contract between one Halsell and an attorney, Ball, whereby the latter was to prosecute a claim, in favor of the former, against the United States, based upon alleged Indian depredations; and if successful to receive one-half of all moneys received. The claim was against the executrix of Halsell's estate. In the Indian Claims Act, March 3, 1891, Chapter 358, the Congress *prohibited any fee to an attorney other than as allowed by the Court of Claims* and then not to exceed 20% of the amount recovered, and made void any contracts to the contrary.

Mr. Justice Gray delivering the opinion of this Court said (p. 80):

> By several decisions of this court, indeed, beginning at December term, 1853, contracts for contingent fees, by which attorneys employed to prosecute claims against the United States were to be allowed a proportion of the amount recovered in case of success, and nothing in case of failure, were held to be lawful and valid.

> Congress has evidently considered that, in some cases at least, to permit contracts to be made for the payment to attorneys, by way of contingent fee, of a large proportion of the amount to be recovered, is in danger of leading to extortion and oppression.

(At p. 83:)

> In view of previous experience, this last provision was a wise, reasonable, and just provision for the protection of suitors; and it was clearly within the constitutional power of Congress.

(At p. 85:)

> For the reasons above stated, Ball cannot maintain this action upon the contract between him and Halsell; and he does not sue, and could not recover, upon a *quantum meruit*.

Capital Trust Company v. *Calhoun*, 250 U. S. 208

That was a proceeding in equity against an executor for an accounting in a probate (circuit) court of Kentucky wherein the attorney, Calhoun, intervened and secured a decree ordering the executor of the estate of one Arnold to pay an attorney fee based upon a contract to prosecute a claim against the United States for a fee of 50% of any amount collected. The Court of Appeals of Kentucky affirmed the decree, 177 Ky. 518; 197 So. 944, and a writ of error to this court was sued out on the ground that the Congress had validly limited the attorney's fee to not to exceed 20% of the

amount recovered. In reversing the decree of the State Court this Court, speaking through Mr. Justice McKenna, said (p. 216):

> But the judgment is construed by the parties as having more specific operation, construed as subjecting the money received from the government to the payment of the balance of Calhoun's fee; doubtless because the estate has no other property. On that account it is attacked by the Trust Company and defended by Calhoun. The controversy thus presented is discussed by counsel in two propositions: (1) The validity of the contract independently of the limitation imposed by Congress upon the appropriated money; (2) the power of Congress to impose the limitation as to that money. The latter we regard as the main and determining proposition; the other may be conceded, certainly so far as fixing the amount of compensation for Calhoun's services.

(At p. 217:)

> We, however, need not dwell upon the distinctions (their soundness may be disputed), nor upon the contentions based upon them, because, as we have said, we consider the other proposition, that is, the power of Congress over the appropriated money and the limitation of payment out of it to an agent or attorney to 20 per cent of the claim, to be the decisive one.
>
> In its discussion counsel for Calhoun have gone far afield and have invoked many propositions of broad generality, have even

adduced as impliedly against the power, if we understand counsel, the constitution of the court of claims and its jurisdiction, as weight in the same direction.

(At p. 218:)

In a general sense there is force and much appeal in the contentions, but we think they carry us into considerations beyond our cognizance. Liberty in any of its exertions and its protection by the Constitution are of concern. The right to bind by contract and require performance of the contract are examples of that liberty and that protection, and they might have resistless force against any interfering or impairing legislation if the contest in the case was simply one between Calhoun and the Arnold estate. But there are other elements to be considered, *there is the element of the condition Congress imposed on the subject-matter of the controversy, regarded as a condition of its grant.* [Italics ours.]

(At p. 219:)

The contention (i. e. that the legislation was beyond the constitutional power of Congress) "has no legal basis, and it may be said it has no equitable one. Neither the justice nor the policy of what sovereignty may do or omit to do can be judged from partial views or particular instances. It is easy to conceive what difficulties beset and what circumstances had to be considered in legislating upon such claims. Definite dispositions were matters

> of reflection, and, it may be, experience, imposition was to be protected against as well as just claims provided for; and, considering claimants and their attorneys in the circumstances, it may have seemed to Congress that the limitation imposed was fully justified—that 20 per cent of the amounts appropriated would be a proper adjustment between them. We are not concerned, however, to accuse or defend. Whatever might have been the moving considerations, the power exercised must be sustained.

And in *Calhoun* v. *Massie*, 253 U. S. 170, this Court held that the limitation as to the fee is not confined to the proceeds of the Constitutional grant.

4. The necessity for the policy, and the factual basis for the legislation, is for the Congress to determine; and its determination if directed to a constitutional end is not reviewable.

When the Congress has exercised its constitutional prerogative in legislating on a *subject*, for example bankruptcy, currency, or commerce, State laws, statutory or common, and State court jurisdiction are affected and controlled thereby; and the determination of the *necessity* for such legislation is a legislative, not a judicial, function.

Norman v. *B. & O. Railway Co.*, 294 U. S. 240

In that case, and in the other *Gold Clause* cases decided contemporaneously, the opposition was directed to the power of Congress with particular respect to the due process and impairment of con-

tract provisions of the Constitution. In sustaining the legislative power this Court, speaking through Mr. Chief Justice Hughes, said:

> Here, the Congress has enacted an express interdiction. The argument against it does not rest upon the mere fact that the legislation may cause hardship or loss. * * * And the contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.

(At p. 307:)

> This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

(At p. 311:)

> That point is whether the gold clauses do constitute an actual interference with the monetary policy of the Congress in the light of its broad power to determine that policy. Whether they may be deemed to be such an interference depends upon an appraisement of economic conditions and upon determinations of questions of fact. *With respect to those conditions and determinations, the Congress is entitled to its own judgment.* We may inquire whether its action is arbi-

trary or capricious, that is, whether it has reasonable relation to a legitimate end. If it is an appropriate means to such an end, the decision of the Congress as to the degree of the necessity for the adoption of that means, is final. [Italics supplied.]

5. The Legislative History shows the intent of Congress to limit fees otherwise allowable by courts.

Since legislation on a subject, or as to persons, is controlling as to jurisdiction of courts, and since the language of Section 500 seems sufficiently broad as to include all persons and all courts, the argument that a probate court has jurisdiction to allow a fee contrary thereto must be based upon the proposition that the Congress *did not intend* to limit the jurisdiction of State Courts as to fees that may be allowed in preparing and filing claims for war risk insurance (or for other benefits included in Sec. 500).

Did the Congress consider that there was necessity for limiting fees to be allowed in such cases by State courts, and if so did it evidence its intent by apt language in the legislative enactment?

This court took judicial notice, in the *Margolin* case, *supra*, of the committee reports on the Bill. The debates in the House of Representatives on this section reported in the Congressional Record, Volume 56, Part 6, pp. 5220–26, April 17, 1918, are contained in part in the record in this case (R. 48–

51). Portions of the debates believed pertinent are as follows:

Mr. RAYBURN. The only reason on earth for the introduction and report of this bill and the asking for its consideration is that since the passage of the war-risk insurance act, like what happened under the pension act to some extent, organizations of lawyers have been formed from one end of this country to the other, so-called lawyers, who have been preying upon the ignorance of the people who are the beneficiaries of the act for insurance, compensation, and allotments.

Mr. MOORE of Pennsylvania. That ought to be stopped.

Mr. RAYBURN. That is exactly what we are trying to stop, and that is the only thing this bill seeks to do.

* * * * * *

Mr. TREADWAY. The reason for the introduction of this measure is very plain. I desire to call attention to a sentence in section 13 of the war-risk insurance act approved October 6, 1917, which reads as follows:

"The director shall adopt reasonable and proper rules to govern the procedure of the divisions to regulate the matter of compensation, if any, but in no case to exceed 10 percent, to be paid to claim agents and attorneys for services in connection with any of the matters provided for in Articles 2, 3, and 4."

Now Articles 2, 3, and 4, are the allowance, compensation, and war-risk insurance, so that you see whatever was done under the authority of a claim agent entitles that agent to receive 10 percent of the benefits derived by the beneficiary from the Government. In other words, take, as an illustration, a $10,000 war-risk insurance policy. Such a policy would not be paid in a lump sum of $10,000, but would cover a period of 20 years, or 240 months.

Now, then, during the entire life of that policy the claim agent who has presented the claim to the War Risk Bureau can demand the 10-percent commission for those services.

Undoubtedly, that was a mistake in the framing of the bill. The bill never was so intended. The department did not intend, the gentlemen who offered the war-risk insurance bill did not intend, nor did the Committee on Interstate and Foreign Commerce intend that any such opportunity should be given to the claim agent. We have not heard, however, of any claim agent objecting to that phrase in the bill up to the present time. It is a very nice opportunity, and one which is being rapidly made use of.

* * * * *

Unless there is still some joker we have not discovered (italics supplied), enactment of this bill will absolutely prevent applications being made by claim agents in behalf of beneficiaries under the act who would prevent them from obtaining all that is justly their due.

* * * * *

Mr. JUUL. I should like to ask the gentlemen if the penalty clause in this bill may not be misunderstood, and should it not provide an exception in favor of people who legally represent claimants when there is a dispute between the Government and the claimant?

Mr. TREADWAY. That must come through court action. There could be no question of any discrepancy in that feature.

Mr. JUUL. But, if the gentlemen will pardon me, in line 22 you provide a penalty against anyone who shall negotiate with anybody——

Mr. TREADWAY. It is intended that it should.

Mr. JUUL. I understand; but there are cases where attorneys are permitted by the bill, and you do not except those attorneys from the penalty.

Mr. TREADWAY. May I call the gentleman's attention to the fact that there are two places where attorneys or claim agents are recognized? One is in the preparation of the papers and the execution of necessary papers, where not to exceed $3 may be charged. That is simply a clerical service. Then, you will see the bill also recognizes attorneys in connection with a suit.

Mr. JUUL. Yes.

Mr. TREADWAY. There is no other place where the claim agent can legally perform services, and it is not intended that there should be.

Mr. JUUL. My question to you is whether or not you are providing a penalty for the attorney who properly represents the claimants before the Government, where there is a dispute as to the appointment and who the claimants are?

Mr. TREADWAY. If the gentleman will read lines 10 to 21, I think he will get the information; but I would be glad to take it up with the gentleman any time.

* * * * *

Mr. JUUL. Suppose there is a disagreement as to who is the legal claimant in the case; may the one who is decided by the department not to be the legal claimant go to his attorney and say, "I, and not the other man, am the legal claimant," and if he does, is the attorney to be subjected to a penalty because he negotiates?

Mr. SNOOK. No; not if he negotiates, but if he charges a fee not authorized by the law. There will be no trouble about the attorney making out affidavits or making the proper proofs. Hundreds of attorneys in this country are representing soldiers and are making proofs for them and drawing affidavits and all that.

* * * * *

Mr. LINTHICUM. Is not the gentleman wrong when he says that it provides a 10 percent fee? Does not the law provide not exceeding 10 percent?

Mr. GREEN of Iowa. If the gentleman has practiced law, as I presume he has, I will

ask if he ever knew of a court cutting down those fees?

Mr. LOBECK. And the gentleman has had experience as a judge, too?

Mr. GREEN of Iowa. The gentleman will excuse me from answering that. I am not speaking from the standpoint of a judge, if I was, I would say the attorney always claims to have earned the fee.

* * * * * *

Mr. DEWALT. Now the gentleman from Iowa takes the position that the courts would always fix 10 percent, and says that his experience as a lawyer is that they uniformly do that. I am sorry to hear the gentleman admit that he practices in a jurisdiction of that kind (laughter).

I know Iowa to be one of the most reputable States in the Union, and I have no doubt the gentleman comes from one of the most reputable communities in that State, and its judiciary should be above and beyond any such suspicion. My experience, not only in the district courts but in the court of common pleas, has been that when they have a right to fix compensation they favor the claimants and make the fees rather low instead of high for the attorneys.

Mr. MADDEN. What would the gentleman say about fixing a limit on the amount.

Mr. DEWALT. I think that would be a wise provision, and I would stand for an amendment of that sort.

* * * * *

Mr. GOOD. Mr. Speaker, I hope the committee will accept an amendment to the sec-

ond paragraph. It will be observed that the second paragraph reads as follows:

"Any person who shall, directly or indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor."

It seems to me the words "except herein provided" should be stricken out, and that we should insert "in excess of the fees or compensation herein provided."

* * * * *

Mr. RAYBURN. I have considered the amendment suggested by the gentleman from Iowa (Mr. Good), and I am firmly convinced that the language of the bill is better than the language that he suggested, although he may be right and I may be wrong.

On another occasion the Congress expressed opinions as to attorney fees allowed by, or procedure in, state courts. On June 26, 1926, the Senate was debating that part of a Bill which is now Section 450, Title 38, U. S. C.—the law whereunder the Administrator of Veterans' Affairs was required to appear in the State Court in the instant case and object to the fee as illegal or "in excess of that allowed by law."

(Congressional Record, Vol. 67, No. 166, P. 12079:)

Mr. ROBINSON of Arkansas. My information is that the retention of this House language will give the Veterans' Bureau a

standing and enable it to protect the veterans against the practices which are implied in the charges against * * *.

* * * * *

Mr. REED of Pennsylvania. * * * Quite seriously, we are in full agreement with what the Senator has said about the impropriety, but we did not think it was right to have the Veterans' Bureau usurp the authority of the State Courts which appoint these guardians. What we have done has been to adopt the House language, which the Senators will find on the following page of the bill, which gives the director authority to go into these courts of appointment whenever he finds anything to take exception to in the conduct of a guardian, gives him standing to interplead, as it were, and ask the removal or the surcharge of the guardian.

* * * * *

Mr. REED of Pennsylvania. It is a question of State rights, and we simply did not want to intrude too far.

* * * * *

Mr. DILL. The Senator says that we do not want to interfere with these courts, but the Senator knows that the Congress cannot reach the courts but the Congress can reach the director if he does not protect these people in his charge.

Mr. HEFLIN. It makes no difference who appoints them.

Mr. DILL. The history of the matter shows that the courts did not protect them, and

therefore Congress ought to, by this legislation.

Mr. REED of Pennsylvania. In this legislation we give the director authority to go into any State Court and we provide for the payment of the necessary expenses and fees in doing so. We thought—perhaps the Senate will disagree with us—that that was as far as we ought to go in the recognition of the independence of the several States in the appointment of conservators and guardians.

* * * * *

(At p. 12082:)

Mr. GEORGE. Mr. President, it strikes me that there has been a great deal of emotionalism displayed here about a very simple matter, and I wish to say something about it.

It is quite true that when a guardian embezzles the funds of his ward or for any other reason ought not to continue as guardian, we may feel a righteous indignation against the guardian; but it is quite a different thing to override the established tribunals of the country because of a particular case or because of a flagrant abuse that may have been brought to light with respect to a particular case and to reject a principle written in the law that is consonant with sound policy.

There is not a shadow of doubt that the Congress appropriating money for the disabled veterans, may safeguard that money; and there is not a shadow of doubt that the Director of the Veterans' Bureau may be

given authority to appoint a guardian for the ward or to withhold the payment of money to the guardian if for any reason he finds that the guardian is commercializing the infirmities and the afflictions of the ward. Congress has that power, undoubtedly, but it seemed to many members of the Committee that it was a sounder policy to recognize the validity of the appointment of a guardian by the State of Virginia or the State of Alabama or the State of Georgia or the District of Columbia and allow the director of the bureau to go into the court and bring to the attention of the court any irregularity or any misconduct upon the part of the guardian.

* * * * *

Mr. DILL. The Senator says he is a ward of the State Court. I do not care whether he is a ward one way or the other. The fact remains that these men are taken care of at the expense of the Federal Government; and if any State court in its action fails to protect these men, then I think Congress ought to provide that the man who is under the direction of Congress, namely, the director, should protect them.

* * * * *

This debate followed extensive hearings and investigations had or made by a Select Committee of the Senate on Guardianship matters, which resulted in an amendment to the World War Veterans' Act providing in part, "Whenever it appears that any guardian * * * or other per-

son * * * has collected or is attempting to collect fees * * * that are inequitable or are in excess of those allowed by law * * * the director(Administrator) is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court."

It is not to be presumed that the Congress would require the Administrator to make such representations, as to "fees * * * in excess of those allowed by law," without being convinced of the necessity for such action.

6. Section 500 is therefore controlling as to fees allowable by State Courts for services stated therein.

It is believed that the legislative history clearly shows that the Congress was of the opinion that *all* veterans, sane or insane, and whether sued in court on a contract or in a guardianship proceeding, needed, and that it was the intent to afford, protection against attorney fees in excess of those fixed by the Congress as proper and allowable. Further, that as to insane veterans under guardianship, and therefore under the protection of the State Courts, the Congress has—not once merely but many times, and after exhaustive investigations and hearings—determined that they need added protection. As said by this court in *Spicer* v. *Smith*, 288 U. S. 430, the Congress showed a purpose "to safeguard to beneficiaries the appropriations and payments made for their benefit * * *

and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves." If a sane veteran, or beneficiary, is entitled to protection against excessive attorney fees (*Margolin* case, *supra*), why, especially in view of the expressed Congressional solicitude, should not insane veterans be entitled to the same protection?

Why should not the limitations as to attorney fees be binding upon the State Courts the same as those with respect to taxation, Section 454a, Title 38, U. S. C., contained in the same original Act and carried forward in all subsequent amendments thereto?

Lawrence v. *Shaw*, 300 U. S. 245

This court held such limitations as to taxation of the funds paid a guardian of an insane veteran, and deposited by him in a bank, valid and controlling even as against the sovereign power of a State, and reversed the Supreme Court of North Carolina which had affirmed an order of the Superior Court, the court having jurisdiction of the guardianship.

7. State Courts of appellate jurisdiction have held uniformly that they have no jurisdiction to allow a fee contrary to Section 500.

Prior to the present case no State Appellate Court has ever held that Section 500 is not absolutely controlling as to jurisdiction to allow attorneys' fees in connection with the claims for bene-

fits under the World War Veterans' Act, as amended. The *Stein* case, arising in the Superior Court, Allegheny County, Pennsylvania, involved the pension acts and Executive Orders, but not Section 500. *In re Stein*, 180 Atl. 577. One of the clearest expositions of the doctrine that the State probate courts are, and should be, bound by the Federal Statute is contained in a case decided in the Supreme Court, Appellate Division, First Department, New York. *In re Shinberg, Hines* v. *Schwartz*, 253 N. Y. S. 354, 238 A. D. 74.

In that case the attorney, Schwartz, acting for the committee for the insane veteran, filed an action prematurely in the Federal District Court, Eastern District of New York, on the contract of insurance. Said suit was voluntarily dismissed, whereupon the claim was paid. The committee secured from the probate court (Supreme Court, First Department, New York) an order to pay the attorney a sum equal to 10% of the amount received. The Administrator of Veterans' Affairs filed an application pursuant to New York practice to vacate the order, which was denied, but the Appellate Court reversed the Supreme Court, saying:

> The respondent contends that inasmuch as the settlement was made after the claim had been denied by the government, and after he had instituted an action in the United States District Court, he is not bound by the $10 limitation.

All the parties connected with the litigation speak in very glowing terms of the able services rendered by the respondent in behalf of the incompetent. Mrs. Shinberg, the wife of the veteran, has submitted an affidavit in which she avers that her husband would not have received anything if it had not been for the services of the respondent, Sanford N. Schwartz.

The appellant contends, however, that it is his duty to object to the allowance made by the court, in view of the provisions of Title 38, U. S. Code Annotated, Section 551, to the effect that the payment of any claim agent or attorney for assistance in the preparation and execution of necessary papers in any application to the bureau shall not exceed $10; that wherever a decree or judgment shall be rendered in an action, the court shall determine and allow reasonable fees for the attorney not to exceed 10 percent of the amount recovered, the respondent is bound by the provisions thereof, and not having applied for a decree or judgment he becomes a creditor against the estate of the incompetent person.

We are confronted with the emphatic language of this statute, which provides that an attorney must not take more than $10 for services rendered to an incompetent person, unless a judgment or decree is entered, at which time the court must provide in said judgment or decree for the allowance of a reasonable fee not to exceed 10 per centum of the amount recovered and to be paid

This statute was considered in *Welty* v. *United States* (C. C. A.) 2 Fed. (2d) 562, where the court held that the statute does not prevent a guardian, or other person, paying out of his own funds compensation to an attorney for his services, but that the estate of the ward should not be taxed with an additional fee unless suit is filed.

In *Purvis* v. *Walls et al.*, 184 Ark. 887, 44 S. W. (2d) 353, an attorney was indicted for taking more than the fee permitted by statute. He accepted $1,380 for securing benefits under war risk insurance, similar to those secured in this case. After a trial in the District Court he was convicted, and on appeal the conviction was affirmed. *Purvis* v. *United States* (C. C. A.) 61 Fed. (2d) 992. Judge Kenyon wrote an opinion for the Circuit Court of Appeals in which he held it to be a crime to take more than the $10 allowed by statute, unless such allowance is made as provided by law. See also *Lopez* v. *United States* (C. C. A.) 17 Fed. (2d) 462; *Margolin* v. *United States*, 269 U. S. 93, 46 S. Ct. 64, 70 L. E. 176.

In the *Matter of Zadurin's Estate*, 142 Misc. 24, 25, 253 N. Y. S. 652, 653, the surrogate of New York County in a similar case disallowed a claim of $1,500 stating: "This court will not affirmatively join in a violation of the rules governing attorneys' fees in such Federal matters as the war-risk insurance. The amount involved in the assignment does exceed the allowance per-

mitted by the Federal rule. * * * The claim in the sum of $1,500 is disallowed."

The argument is here made that suit was brought in the present instance. It must be admitted, however, that the suit was discontinued and the claim settled by the government with the committee for the incompetent.

This is not a case where a judgment or decree was entered. Although the statute does say that the $10 limitation applies where no suit has been filed, nevertheless it also provides that any allowance to be made where a suit has been filed must be made in the judgment or decree growing out of that action.

There may be cases where the enforcement of this statute will result in a hardship. Admitting that this may be such a case, nevertheless the necessity for such a statute must be apparent, especially in view of the great need of protection for people who really are wards of the court and who, in the absence of such statutory provision, would, in many cases, be preyed upon by the unscrupulous. Because it safeguards and protects the unfortunates who are wholly dependent upon the government for support, this statute should be rigidly enforced.

In the present case, the court has no power to award any portion of the war-risk insurance to the attorney for the committee of the incompetent. The order should be reversed, and the motion granted.

Order reversed, and motion granted. Order filed. All concur.

Hines v. *McCoy*, 159 So. (Miss.) 906

That was a guardianship case in Mississippi wherein the guardian claimed credit for attorney fees in the amount of $1,300 for securing payment of war-risk insurance, which fee was allowed by the Chancery Court having jurisdiction. On appeal by the Administrator the Supreme Court of Mississippi reversed the Chancellor's decree saying:

> The main argument in justification of the allowance of the $1,300 fees, and the chancellor's act in sustaining the demurrer to the petition of Hines, the administrator of veterans' affairs, is that the chancery court is not controlled by the federal authorities in the administration of estates, after the money has passed into the hands of the guardian, and that the federal administrator has no standing to intervene and question any act done in the administration, because he has no such interest as would warrant his intervening, and that it would be a meddling by bureaus of the federal government to allow a federal administrator to control the state courts.
>
> We do not think this contention can be maintained. There is no effort, as we understand the proceeding here, for the federal government to undertake to control the state court, but the government seeks to see that the money allowed to war veterans through insurance is properly and economically administered. The federal government has the right to provide, as a condition of the policies and the allowances, as it has provided,

that not more than a given amount ($10) shall be allowed for procuring the money from the government for war veterans. If a suit is necessary, the federal act provides that same may be brought in a federal court, and that that court may allow a reasonable attorney's fee. There is nothing in the petition by the guardian for the allowance showing that the chancellor entered any finding that the $1,300, or any part of it, was allowed by the federal government for services rendered in procuring the insurance. On the contrary, the federal administrator shows that there was no such proceeding.

(1) The United States has a standing in the courts of this state to assert any rights it has, or may have, of a justiciable nature.

(2) It appears to us that, by the rules of comity, the veterans' administrator should be permitted to come into court and challenge any improper allowance of the money received from the government. It certainly would not be contrary to public policy so to do.

The appellant, therefore, was authorized to intervene and challenge the allowance. Under the allegations of the petition of Frank T. Hines, to which the demurrer was allowed, the fee was clearly excessive, and there was no specification of items in the administrator's petition for allowance showing what the services were for, whether they were for procuring the money from the government, or whether for the filing of the two annual accounts. We think the allegations

> of the petition were sufficient to require an answer, and the court should hear evidence on both sides and determine the cause in the light of such hearing.

To the same effect is the decision, *In re Minor*, 145 So. 507. That the rule stated in these decisions was not changed by this court's decision in *Hines* v. *Stein* was held by the Supreme Court of California in

In re Copsey, 60 Pac. (2d) 121.

That was a guardianship case in the Superior Court, Mendocino County, California, wherein the sister and guardian of an insane veteran employed an attorney to file a claim on his war risk insurance contract. The papers were prepared and claim filed, and paid without suit as in the instant case. The Superior Court, on the guardian's application, allowed the attorney a fee of $4,000 for such services. An appeal, based as in the instant case, on Section 500, was filed by the Administrator, and the attorney filed a motion to dismiss the appeal urging certain alleged defects of procedure—among others that the administrator was not a proper party—but principally that the matter had been disposed of by the decision of this Court in *Hines* v. *Stein*. The California Supreme Court in refusing to dismiss the appeal said (p. 123):

> Respondent has directed our attention to a recent case decided by the United States Supreme Court, *Frank T. Hines* vs. *Minnie*

Stein, as guardian, etc., 56 S. Ct. 699, 701, 80 L. E. 1063, decided April 27, 1936, which he claims is conclusive of the present appeal. In that case the administrator of veterans' affairs objected to an attorney's fee, which was allowed by the local court to an attorney for special services rendered by him in the guardianship matter, on the ground that the same was in excess of the amount fixed by the federal statutes and in the president's order promulgated thereunder. Practically the same contentions made by the appellant in the present guardianship matters were made there. The Supreme Court of the United States held in that case that, "We find nothing in any of these acts of congress which definitely undertakes to put limitation upon state courts in respect of guardians or to permit any executive officer, by rule or otherwise, to disregard and set at naught orders by courts to guardians appointed by them." It accordingly affirmed the order of the court of common pleas fixing and allowing said attorney's fees. But in that case the appellant admitted that the services were rendered by the attorney and that the charge was reasonable. While the appellant in his brief does not stress the point that the charge of $4,000 for extraordinary services rendered by the attorney in the Copsey guardianship matter was unreasonable, he does not expressly or by implication in any stage of these proceedings admit its reasonableness. *This distinction between the two cases deprives the cited*

> *case of any authoritative force upon the hearing of respondent's present motion to dismiss.* Incompetent persons are made the special wards of the court, and it is the duty of the court to protect them and their property, whenever it appears from the records in any proceeding before the court, that such action is necessary or advisable. [Italics supplied.]

This decision was, in effect, reversed by the Supreme Court of California in deciding the case on the merits (76 Pac. (2d) Adv. 691), but in its later opinion that Court said (p. 693):

> *In view of the fact that incompetent persons are made the special wards of the court, and it is the duty of the court to protect them and their property (Guardianship of Copsey, supra), it would seem to follow as a matter of reason and logic that attorneys' fees, in excess of the schedule set out in Section 551, Title 38, United States Code, as permissible to be allowed an attorney for a competent veteran, could not be validly allowed the attorney for the guardian of an incompetent veteran. Several state courts have so held. (In re Shinberg,* 263 N. Y. S. 354; *In re Roy C. Minor* (Miss.), 145 So. 507; *Hines v. McCoy* (Miss.), 159 So. 306. *If the government is zealous to protect competent veterans from unreasonable expense in the collection of their claims for government aid, with how much more reason should the estates of incompetent veterans be protected from excessive charges. We are, however,*

> *squarely faced with the recent decision of the United States Supreme Court in the case of Hines* v. *Stein, as guardian, etc.*, 298 U. S. 94, decided April 27, 1936, * * * [Italics ours.]

There is a further distinction, viz, that it was the clear intent of Congress that Section 500 shall be controlling upon all courts or persons, as a valid exercise of legislative power on a *subject* within its constitutional authority—in short that the necessity and intent, said in the Stein decision not to be apparent in the pension acts and Executive Orders, is clearly evident in Section 500 read in the light of its legislative history, and that of concomitant sections. This will be more fully discussed in the Brief accompanying the petition being filed contemporaneously (Copsey).

In what more apt language could the prohibition have been expressed to show such intent? From time immemorial the same language has been used in acts authorizing appropriated moneys to be paid *direct to guardians.* For example observe Private Act No. 563, 74th Congress. [Italics supplied.]

> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, *to the legal guardian of Randall Krauss,* a minor, of Yakima, Washington, the sum of $60 per month until he attains the age of

twenty-one, in full satisfaction of his claims against the United States for the death of his father, mother, and sister, who were killed when struck by a United States Army airplane which crashed at Griffith Park, California, on June 20, 1935: *Provided,* That payments hereunder shall begin on the first calendar day of the month following the approval of this Act; *Provided further, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding.* Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000."

Could the attorney have frustrated the Congressional intent by having the probate court approve a fee in excess of that stated by the Act?

8. The decision of this Court in *Hines* v. *Stein* did not construe said Section 500 and does not control, but the case is controlled by the Supreme Court decision in *Ball* v. *Halsell,* and *Capital Trust Company* v. *Calhoun, supra.*

That this Court was not considering Section 500 in the *Stein* decision seems clear from the following language:

> The petition for certiorari asserts that the objections to respondent's application to the

Court of Common Pleas were based upon the President's Order of March 31, 1933 (Veterans' Regulation No. 10), permitted by § 4 and 7 of the Act of March 20, 1933, c. 3, 48 Stat. 9; "Instructions" promulgated by the Administrator under authority of that Order; and § 111, 114, and 115, Title 38, U. S. C. A.

Section 500 is Section 551, Title 38, U. S. C., and is the law of the land, dependent upon no Regulation or order.

It was not, and is not, as was said to be done in the *Stein case*, admitted that the atto ney fee *dehors the statute* was reasonable (R. 71–73). The question was fully presented to the state courts, the record is full of testimony of the attorney purporting to show he earned a fee of $3,000, and of counter contentions that the services were not worth over $10 as fixed by Section 500 (R. 114–146). But the matter is not labored here; for if the State Court had any authority of law to allow any fee in excess of that stated in ne Federal Statute then the decision of the State Appellate Court on that question would not be reviewable by this Court. And this would be true of the $4,000 fee allowed by the California Superior Court in the *Capsey case*. It was to settle such matters that Congress enacted the fee limitation.

The contract made by the guardian is clearly illegal unless construed—as it may be—in consonance with Section 500. That is, if suit in the

Federal Court had been necessary, as probably was contemplated, then, in the event of success the fee would have been "fixed by the court"—the Federal District Court—at not to exceed 10 per cent of the judgment as provided by said Section 500. Any other contract would be illegal as held by the 8th Circuit Court of Appeals in *Purvis* v. *United States*, 61 Fed. (2d) 992, and by the Court of Appeals, District of Columbia, in *Conlon* v. *Adamski*, 77 Fed. (2d) 397.

In the latter case the Court of Appeals (D. C.) said (77 Fed. (2d), p. 397):

> Appellant James Conlon and appellee Roman Adamski on September 11, 1933, entered into a contract in writing whereby appellee employed appellant as attorney to bring a mandamus proceeding in the Supreme Court of the District of Columbia to enforce the payment of a claim alleged to be due him upon a war risk insurance policy for the sum of $8,740. According to the contract, out of this claim, appellant was to be paid for his services in the sum of $2,500.
>
> Assuming, however, though by no means conceding, that section 3477, R. S. supra, is inapplicable to the present case, appellant's contention would not be improved, since he comes in conflict with the provisions of Section 551, Title 38, U. S. C. (38 U. S. C. A., Section 551), which makes it a criminal offense under any circumstances "'to solicit, contract for, charge, or receive, any fee or compensation" in excess of 10 per centum of

the amount recovered in such a proceeding. *Conlon* v. *Adamski*, 77 Fed. (2d) 397.

In the former the court (8th Circuit) declared (1 Fed. (2d), p. 998):

> The proposition urged that federal statutes cannot prescribe the qualifications of suitors in state courts is beside the point. Here there has been no attempt to do so. Appellant had an undoubted right to make a contract with the Walls for compensation for his services, and to sue thereon; but the amount of the compensation contracted for, or sued for, must not exceed the maximum allowed by the statute for the particular services rendered. The question is not one of appellant's right to make a contract, or to sue thereon—it is whether he attempted thereby to secure or receive a fee in excess of that allowed by Section 551, supra. If he did, then he has violated that statute. *Purvis* v. *United States*, 61 Fed. (2d) 992.
>
> There is no reason why Congress, having created a plan of war risk insurance for the benefit of the soldiers, may not limit the compensation an attorney or agent may receive for assisting the beneficiary in securing benefits due him. Congress can impose such limitations in this connection as it may deem desirable. If a contract for compensation for services rendered in securing payment of war risk insurance claims were a legitimate defense where an attorney is charged with soliciting or receiving fees prohibited by the statute, a large loophole would

be opened for circumventing the statute by all manner of subterfuge.

Similarly with the statute involved in the instant case, there is no ambiguity, the language is clear and it was undoubtedly adopted by Congress to prevent the fleecing of beneficiaries under these war risk insurance certificates, and, if an attorney or agent is not willing to abide by the statute and run the risk of receiving only $10 as a fee for all work done in case suit is not brought, he is under no obligation to take the case. He cannot avoid the provisions of the act by any contract. *Lopez* v. *United States* (C. C. A.), 17 Fed. (2d) 462. The alleged contract in the instant case is no defense.

There is a further distinction between Section 500 and the Regulations and laws considered in the *Stein* case, in that Section 500, except in case of a judgment in a Federal District Court, does not confine prohibition of payment of the fee to *benefits* received under the act, but prohibits absolutely any fee in excess of $10 for services rendered the veteran or on his behalf in connection with a claim.

This phase of the statute was given extensive examination in a case which was decided by the Circuit Court of Appeals, 6th Circuit.

Welty v. *United States*, 2 Fed. (2d) 562

The decision in that case was solely on the point that defendant was entitled to an instruction as to the meaning of Section 13, War Risk Insurance Act (Section 500 here involved). The Circuit

Court of Appeals reversed the lower court which had refused defendant's requested charge therein. The discussion therefore is mentioned here not as direct authority, but as illustrative and because of its persuasive application to the instant case. Judge Mack stated the controverted facts as follows (p. 563):

> Franklin R. Strayer became insane only a few days after his arrival in camp. His father maintained him at a sanitarium, incurring heavy expenses. An application for compensation under the War Risk Insurance Act had been refused, on the ground that the condition did not arise while he was in the service. Defendant, who had been a Congressman, was then applied to by the father. The conflict in the facts is whether he was to receive for his services, if successful in securing compensation under the act for Strayer and payment therefrom to the father for the expenses incurred by him on behalf of the son, one-third of the compensation so to be secured for the son, or whether his employment was solely by and on behalf of the father, and his payment to be made solely by the father, of one-third of such sum as might be allowed to the father because of the expenses incurred by him for his son, plus any expenses to which the defendant might be put in the matter.

After mentioning the view that the statute undoubtedly is within the constitutional power of Congress, and the belief that it did not cover a fee that

might be paid gratuitously by a third person, the court stated—

> the necessary construction of the statute under the rules governing penal acts is to limit the prohibition to payments to be made *by or out of the funds of the applicant and to dealings with him or on his behalf*. [Italics supplied.]

(At p. 564:)

> As we interpret the statute, it permits a charge of $3 to the applicant himself for services in the preparation and execution of the necessary papers, and prohibits any charge whatsoever to him for any additional services in the prosecution of the claim. Even though claim agents and attorneys are not to be recognized in the presentation or adjudication of claims, the rendering by them of services in the prosecution of the claims, gratuitously so far as the applicant is concerned, is not forbidden.
>
> The vital question in this case was whether or not the defendant indirectly solicited or received compensation out of the funds that belonged to the insane applicant, or whether his dealings were entirely with and on behalf of the father and his compensation to be paid solely out of anything that the father might justly recover from the estate of his son.
>
> If, as the government contends, the amount received was not made up of items of expenses actually incurred under agreement for reimbursement by the father out

of his own funds, plus one-third of the balance of the father's fund, that fund being his just claim as allowed by the state court against the estate of his son for expenses actually incurred by him and services actually rendered by him to the son—if, in other words, these proceedings were more or less of a subterfuge intended to hide the actual transaction, and if the actual agreement, though made with the father, was made by him on behalf of his son, and was that the defendant should receive one-third of the amount allowed by the Government to the son—then the verdict would be just.

The court next referred to the exemption against the claims of creditors then contained in Section 28 War Risk Insurance Act—now Section 454a, Title 38, U. S .C., and said (p. 564):

> This right of exemption was not asserted in the state court by the guardian who had no other property in the boy's estate; the attention of the probate judge apparently was not directed to the right of exemption; it may well be that if it had been called to his attention, he might, in view of the nature of the claim—moneys advanced for absolute necessities of life—have directed the guardian to waive it just as the soldier himself, if sane, could have waived it. If, however, defendant, Welty, with knowledge of this provision, participated in any arrangement whereby the right of exemption was to be waived without knowledge or authority of the court and for the purpose of enabling a

fund to be created from the compensation money out of which alone he was to be paid, the jury would be justified in finding therein an indirect and prohibited charge, and the later receipt of payment for services out of funds that belonged to the insane applicant.

By no subterfuge can the prohibited payments be indirectly solicited or received; and while the judgment of the state court may be binding as between the parties thereto—if in fact it be but a step in the carrying out of the subterfuge—the judgment rendered therein affords no defense in this case.

9. The probate court has no power to waive the fee limitation.

But in the discussion quoted, the court failed to state a very significant and fundamental principle, viz, that a court, acting for a ward can waive an exemption on his behalf (statute of limitations, fee limitation statute, or exemption from claims of creditors) only when to do so is for the benefit of the ward.

Ratcliffe, Guardian v. *Davis et al.*, 20 N. W. 763

(At p. 763:)

It is not necessary to set out all of the grounds of the demurrer. One of these is to the effect that it is not within the power of the guardian to waive the homestead rights of his ward.

It is claimed by her guardian that because she is incapable of making her wishes known, that his preference shall be substi-

tuted for hers, and that he can waive the statutory provisions. We do not think he has any power to do so, because, as it appears to us, the right is a personal one, and if not exercised for any reason, even though it be her incapacity to do so, no other person can act in that behalf in her stead.

It does not even appear from the averments of the petition that it would be to her interest, or the interest of her children, that the homestead should be waived.

Estes v. *Browning*, 60 Am. Dec. 238

(At p. 241:)

As a matter of policy, then, and as one very beneficial to estates, administrators are required to set up the statute in cases to which it applies. But this rule has no force in cases where its application would be detrimental, perhaps ruinous, to the estate.

To the same effect is *King* v. *Cassidy*, 36 Tex. 531. Indeed the court must recognize and refuse to waive the exemption or limitation, contrary to the expressed wishes of the ward, if not for the best interests of the ward.

Alling v. *Alling*, 27 Atl. 655 (52 N. J. Eq. 92)

(At p. 656:)

At the death of the husband, the widow and her infant child were, substantially, without means, and the mother was obliged to work to earn a living for both. * * * Her demand against the daughter for

her support, education, and maintenance amounts to over $12,000, or four-fifths of the child's fortune; and yet the daughter, an intelligent young lady, frankly declared on the stand that she wished her mother to be paid in full. It is hardly necessary to say that this court cannot act upon such consent, but must defend the daughter, even against her own mother's claim, examine the demand, and see if it is lawful and proper to be countenanced and enforced by this court.

* * * * *

The statute of limitations is binding on this court, as well as on the courts of law; and wherever a pecuniary demand will be barred at law it will be barred here, unless there is some circumstance in the case which renders it inequitable for the party entitled to its benefit to set it up. We have seen that this is a simple pecuniary demand, founded on a quantum meruit, and I am unable to find in the case any circumstances which renders it inequitable for this defendant to set up the bar of the statute against her mother. *She is clearly entitled to the benefit of the plea, and it is the duty of this court, as her guardian, to plead it for her.* When she attains 21 years of age, she can do what she pleases with her money, but this court cannot permit her to give it away, even to her own mother. [Italics supplied.]

The public policy established for this class of cases is in harmony with that of the State of New

York—and other states—with respect to attorney fees in *Workmen's Compensation* Cases, for example (Sec. 24, Workman's Compensation Law, New York).

In re Fisch, 177 N. Y. S. 338

One of the avowed reasons for the passage of the Workmen's Compensation Act was to insure as large a return to the injured workman in compensation for injuries incurred in the course of his employment as possible. It was realized that under the conditions theretofore prevailing the great majority of cases were taken by lawyers on contingent fees, and that from 33 to 50 per cent of the amounts recovered went to the attorneys, instead of to the workmen. Simplicity of procedure, rapidity and certainty in procuring payment, and receipt by the injured of the bulk of the award, instead of large payments therefrom for services in obtaining it, was the end looked to and accomplished by this remedial legislation.

We do think, however, it is our duty to warn the profession that we regard such conduct, or the use of any means *which the wit of man may devise,* by which a larger amount of the recovery shall go to an attorney than that fixed by the commission, as improper, unethical, and deserving of disciplinary action. We think it clear that we ought to take this stand in support of this legislation, and that hereafter we shall act

upon such offenses accordingly. [Italics supplied.]

10. Finally, the veteran contracted for the protection of the Statute, and the court must give effect to the fee limitation as a part of the veteran's contract.

The contract which the veteran made with the United States entitled him to receive his insurance undiminished by attorney fees except in consonance with the Act (Section 500). This Court has recognized that the contract of insurance consisted in the application filed by the soldier and the law and regulations pursuant to law, and that it was in all respects subject to the provisions of the law. *White* v. *United States,* 270 U. S. 175.

> The certificate of insurance provided in terms that it should be "subject in all respects to the provision of such Act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the act, shall constitute the contract." These words must be taken to embrace changes in the law no less than changes in the regulations.

The veteran, even though now insane, is entitled to the protection of his contract. This contract was binding on the committee, which as an arm of the court, acts for his ward and is bound by the law applicable to the ward. The court has power to

act for the ward in some instances, but it cannot do that which the ward, if sui juris, could not legally do. And if it be argued that the veteran himself might with impunity pay his attorney an illegal fee, such liberty to ignore the law is not vouchsafed guardians or courts. As this Court significantly observed in *Hall* v. *Coppell*, 7 Wal. 542, "The principle to be extracted from all the cases is that the law will not lend its support to a claim founded upon its violation." Approved in *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261.

SUMMARY

It will, therefore, be seen that:

A. This Court has jurisdiction to review the judgment of the New York Supreme Court, Appellate Division, Second Department, in this case because of the Federal question presented, and because said court, the highest State court having jurisdiction of the cause decided the Federal question adversely to the contention of Petitioner and thereby deprived the insane veteran, represented by Petitioner, of a right granted by said Federal Statutes.

B. The United States has by statute (Sec. 500, World War Veterans' Act, Section 551, Title 38, U. S. C.) limited the fees which may be charged by any one in connection with a claim for war risk insurance.

C. This limitation was intended to, and does, apply to guardianship cases in State courts, and is

binding on said courts and on all agents and officers of the court.

D. The New York court, in deciding this case to the contrary, erred.

E. The specific point raised in this case has not been decided by this Court; and the statute in this respect should be construed by this Court.

F. The case is one of importance and public concern. It involves the question whether a law of the United States, intended for the protection of all veterans, may be, in effect, narrowed in its application, or abridged by judicial decision, as to deny an insane veteran that protection. It challenges the constitutional power of Congress to provide for the common defense, as to whether in the exercise of such power it may adequately protect veterans, or their beneficiaries and dependents, in the benefits provided for them by a grateful government. It involves the question whether an insane veteran, supposedly under the protection of the probate court, may be denied that protection not only promised him by the Government he served, but for Court should be reversed.
which he contracted and paid.

G. Under what is believed the proper construction of the statute, the judgment of the New York

CONCLUSION

It is respectfully submitted that, for the reasons stated, and upon the authorities cited herein, the judgment of the Supreme Court, Appellate Divi-

sion, Second Department, State of New York, should be reviewed by this Court by bringing before it the record on Writ of Certiorari, that Petitioner should be heard thereon, to the end that there may be vouchsafed to the insane veteran that right granted by the Federal Law, the right not to have his insurance benefits or his estate depleted by an attorney fee in excess of that fixed by said law and his insurance contract thereunder.

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